

REMARKS

I. Claim Rejections Under 35 U.S.C. § 103

The Examiner has made a new rejection of claims 1, 3, 9 and 11 under 35 U.S.C. §103(a) over the U.S. Patent No. 4,744,364 to Kensey et al. (Kensey) and U.S. Patent Publication No. 2004/0215232 to Belhe et al. (Belhe.) The Examiner cites Kensey for the teaching of a locator device having “an expandable occlusion member” that is “capable of performing the functions claimed.” The Examiner admits that Kensey fails to disclose the distal and proximal openings as claimed. The Examiner cites Belhe for its teachings regarding an elongate member with a bleed back lumen to supply these missing aspects. The Examiner concludes that it would have been obvious to modify Kensey’s device with Belhe’s bleed back lumen to “provide visual feedback to the operator as to the location of the device, thus ensuring proper positioning of the occlusion member.” Applicant respectfully requests that the Examiner reconsider and withdraw the rejection in view of the following reasons.

First, the Examiner characterizes Kensey’s closure 30 as meeting the claim limitations regarding releasable attachment. Specifically, the Examiner states “the relationship between 36 and 38 serve as the attachment.” Applicant respectfully disagrees with this conclusion. The claims require that the occlusion member be “releasably attached by an attachment to a specific position on said elongate member.” As commonly understood by one of skill in the art, and as used in the claims and specification, the term “attachment” indicates a physical connection. The Examiner cites tubular body 32 of Kensey as corresponding to the claimed elongate member. As described at col. 3, line 66 to col. 4, line 25, closure 30 is simply deposited within tubular body 32 and then expelled by pusher means 38. Accordingly, Applicant respectfully submits that Kensey suggests nothing that corresponds to an “attachment,” much less “an attachment to a specific position” between closure 30 and tubular body 32.

Further, elements 36 and 38 cited by the Examiner as constituting the attachment are clearly not the claimed elongate member. Element 36 is the retraction filament and is described in col. 4, lines 32 to 42 as extending down the length of tubular body 32 and that “thread 36 slides down the tubular member with the closure” and “is sufficiently long that a substantial length extends outside of the proximal end of the device 20 even after the closure is in the

artery.” Since there is no physical connection between thread 36 and tubular body 32, Applicant respectfully submits that it cannot be considered to contribute to an “attachment” to the elongate member as the claims require. In addition, as shown in Fig. 4, thread 36 remains attached to closure 30 after tubular body 32 is removed, and therefore does not meet the limitation of being “releasably attached.” Similarly, pusher means 38 also has no physical connection to closure 30. Applicant respectfully submits that one of skill in the art would not consider the action of pusher means 38 contacting closure 30 when expelling it as constituting an “attachment” as claimed. Even if it were considered as such, pusher means 38 does not correspond to the elongate member of the claims.

To summarize, the claims specifically require that the occlusion member be attached to the elongate member and Kensey discloses no attachment between the elongate member, tubular body 32, and the occlusion member, closure 30. Even if elements 36 and 38 constituted an attachment as asserted by the Examiner, these are separate structures that are not connected to the tubular body 32, so it is improper to construe them as forming an attachment between closure 30 and tubular body 32.

Next, the Examiner contends that Kensey’s closure 30 is capable of performing the functions claimed. As described throughout the reference and clearly shown in Kensey’s drawings, such as Fig. 4, closure 30 remains within the vessel lumen to seal the puncture from the inside. As such, closure 30 is not designed to be “withdrawn” from the blood vessel lumen to seal the puncture as the claims require. To emphasize this aspect of the invention, Applicant has amended the claims to specifically require that the occlusion member be configured to be withdrawn from the blood vessel lumen. In contrast, closure 30 of Kensey clearly remains within the blood vessel lumen and, as such, cannot be considered as being configured to be withdrawn.

Applicant also respectfully submits that the combination of Kensey and Belhe proposed by the Examiner is improper. As noted above, the structure of Kensey corresponding to the elongate member is tubular body 32. The claims require that the distal and proximal openings be located in the elongate member and be connected by a lumen, which allows blood entering the distal opening to flow to the proximal opening. In contrast, any lumen present in the tubular body 32 of Kensey is obstructed by pusher means 38. Column 4, lines 10-19 of Kensey describe the relationship between pusher means 38 and tubular body 32 as being a close fit as shown in

Fig. 3, for example. Accordingly, one of skill in the art would recognize that any space existing between these elements would not allow the operation of a bleed back lumen as the claims require. Since Belhe discloses nothing that corresponds to pusher means 38 of Kensey, this reference provides no guidance as to how such an element could be accommodated while providing the bleed back functionality. For these reasons, Applicant respectfully submits that the combination of Kensey and Belhe fails to suggest the invention as claimed.

For at least the reasons above, Applicant respectfully requests that the Examiner reconsider and withdraw the §103 rejection of claims 1, 3, 9 and 11 over Kensey and Belhe.

II. Rejoinder of Claims 5 and 7

As discussed in the previous responses, Applicant continues to request that method Claims 5 and 7 be rejoined when Claim 1 is found patentable, as they have been amended to share all the structural limitations of this product claim.

III. Conclusion

For the reasons set forth above, Applicant submits that all claims now present in this application patentably distinguish over the prior art. Therefore, Applicant respectfully requests that the rejection of the claims be withdrawn, and that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
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